MONTANA RULES
OF
APPELLATE CIVIL PROCEDURE

Prepared and Submitted by the

ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE TO THE SUPREME COURT OF MONTANA

Adopted by the Supreme Court
Effective January 1, 1966

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MONTANA RULES OF APPELLATE CIVIL PROCEDURE

TITLE I. APPLICABILITY OF RULES

RULE 1. Scope of Rules—From What Judgment or Order an Appeal May be Taken.

These Rules govern procedure in appeals in civil cases to the Supreme Court of Montana from Montana district courts and original proceedings in the Supreme Court of Montana. The party applying for original relief is known as the petitioner and the adverse party as the defendant. The party appealing is known as the appellant, and the adverse party as the respondent.

A party aggrieved may appeal from a judgment or order, except when expressly made final by law, in the following cases:

(a) From a final judgment entered in an action or special proceeding commenced in a district court, or brought into a district court from another court or administrative body.

(b) From an order granting a new trial; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve an attachment; from an order changing or refusing to change the place of trial when the county designated in the complaint is not the proper county; from an order appointing or refusing to appoint a receiver, or giving directions with respect to a receivership, or refusing to vacate an order appointing or affecting a receiver; from an order directing the delivery, transfer, or surrender of property; from any special order made after final judgment; and from such interlocutory judgments or orders in actions for partition as determine the rights and interests of the respective parties and direct partition to be made. In any of the cases mentioned in this subdivision the Supreme Court, or a justice thereof, may stay all proceedings under the order appealed from, on such conditions as may seem proper.

(c) From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance for a widow or child; or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor, or administrator, or guardian; or refusing, allowing, directing the distribution or partition of any estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share; or confirming or refusing to confirm a report of an appraiser setting apart a homestead.

All questions raised on an order overruling a motion for a new trial or on an order changing or refusing to change the place of trial under R.C.M. 1947, section 93-2906 subdivisions 2, 3 or 4 thereof may be raised and reviewed on an appeal from the judgment.

Advisory Committee's Note

R.C.M. 1947, § 93-8003 is restated and clarified. The effect of § 93-8004(3), referring to "an order changing or refusing to change a place of trial," is limited by providing for appeals from orders re change of venue only in cases where the motion for change is based upon subdivision 1 of § 93-2906.

Since these Rules only apply to appeals from district courts to the Montana Supreme Court, the provisions of §§ 93-8001 and 93-8002 are not superseded insofar as they refer to appeals in actions in police or justice's courts: a judgment or order in a civil action in police or justice's courts, except when expressly made final, may be reviewed as prescribed in R.C.M. 1947, §§ 93-7901 to 93-7908.

RULE 2. What the Court May Review on an Appeal From a Judgment.

Upon appeal from a judgment, the court may review the verdict or decision, and any intermediate order or decision excepted or objected to within the meaning of Rule 46 of the Montana Rules of Civil Procedure, which involves the merits, or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

Advisory Committee's Note

This Rule incorporates R.C.M. 1947, § 93-8022.

RULE 3. Suspension of the Rules.

In the interest of expediting decision upon any matter before it, or for other good cause shown, the Supreme Court may, except as otherwise provided in Rule 21(b), suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

Advisory Committee's Note

This Rule is taken from Rule 2 of the federal draft. Its purpose is explained by the Federal Advisory Committee's Note. Adjusted to state practice, this purpose is to make clear the power of the Supreme Court to expedite the determination of cases of pressing concern to the public or to the litigants by prescribing a time schedule other than that provided by the Rules. The Rule also contains a general authorization to the Supreme Court to relieve litigants of the consequences of default where manifest injustice would otherwise result. Rule 21(b) prohibits the Supreme Court from extending the time for taking appeal.

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

RULE 4. How Taken.

(a) Filing the notice of appeal. An appeal shall be taken by filing a notice of appeal in the district court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal.

(b) Joint Appeals. If two or more persons are entitled to appeal from a judgment or order of the district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notices of appeal as a single appellant.

(c) Content of the Notice of Appeal. The notice of appeal shall specify the party or parties taking the appeal; and shall designate the judgment or order appealed from. Form 1 in the Appendix of Forms is a suggested form of notice of appeal.

(d) Service of Notice of Appeal. The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address, and shall mail a copy of the notice of appeal to the clerk of the Supreme Court. The clerk of the district court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, his counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

Advisory Committee's Note

This Rule is patterned after Rule 3 of the federal draft, but excludes references to criminal cases, habeas corpus proceedings and bankruptcy. Nothing other than the filing of a notice of appeal in the district court is required for the perfecting of an appeal. In the interest of providing the Supreme Court with prompt notice that its jurisdiction has been invoked, the Rule directs the clerk of the district court to forward a copy of the notice of appeal to the clerk of the Supreme Court. The requirement that the appellant furnish the clerk with the necessary number of copies of the notice of appeal and that the clerk endorse on each copy served the date on which the notice was filed are for the convenience of the clerk and litigants respectively.

RULE 5. Time for Filing Notice of Appeal.

The time within which an appeal must be taken shall be 30 days from the service of notice of entry of judgment as provided in Rule 77 (d) of the Montana Rules of Civil Procedure, but if the State of Montana or an officer or agency thereof is a party, the notice of appeal shall be filed within 60 days from the date of such service. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 7 days of the date on which the first notice of appeal was filed, or within the time otherwise provided by this Rule, whichever period last expires.

The running of the time for filing a notice of appeal is suspended as to all parties by a timely motion filed in the district court by any party pursuant to the Montana Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this Rule commences to run and is to be computed from mailing by the clerk of notice of the entry of any of the following orders made upon a timely motion under such Rules: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59.

Upon showing of excusable neglect, the district court may extend the time for filing the notice of appeal by any party for a period not to exceed 30 days from the expiration of the original time prescribed by this Rule.

Advisory Committee's Note

This Rule is patterned after Rule 4 of the federal draft. (Provisions for appeals in bankruptcy, petitions for impeachment, under the Railway Labor Act, under the Interlocutory Appeals Act, and in criminal cases, are omitted.) It materially shortens the time for taking an appeal.

The federal draft provides that the notice of appeal shall be filed within 30 days "of the date of the entry of the judgment or order appealed from." The change, which measures the time from service of notice of entry of the judgment, is for the purpose of avoiding uncertainty as to what is a judgment and reducing the possibility of lack of knowledge of the entry of the judgment or order.

The provision for added time for appeal by other parties after notice of appeal is filed by one party is new. The Federal Advisory Committee note explains this as follows: "It not infrequently happens that a party considers himself aggrieved by the final judgment but is willing to abide by it if it is to be the final result of the action. Such a party should be protected against the possibility that another party may file a final hour appeal and thereby oblige the forbearing party to undergo the expense of an appeal

without the opportunity of presenting his own grievance" to the Supreme Court.

The time limit for taking an appeal would not prevent the taking of an appeal at any time after the entry of the judgment or order and before service of notice of entry.

The final paragraph permits an extension of the time for taking an appeal by the district court "upon a showing of excusable neglect." In view of the ease with which an appeal may be taken—the filing of a simple notice with the clerk of court—and the unlikelihood that there will not be actual notice of the entry of the judgment or order, it would be an extraordinary case which would justify an extension. But the district court should have the authority to extend time in extraordinary cases where injustice would otherwise result. The phrase "by any party" makes it clear that the district court may extend the time allowed for filing a cross or separate appeal after an initial appeal has been filed.

RULE 6. Undertaking for Costs on Appeal.

(a) Within 10 days after service of notice of appeal an undertaking for costs on appeal shall be filed in the district court, or a deposit of the money in the amount thereof be made with the clerk of the district court to abide the event of the appeal, or the undertaking be waived by the adverse party in writing. The undertaking must be executed on the part of the appellant by at least 2 sureties, or by a corporate surety as may be authorized by law, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on the dismissal thereof, not exceeding five hundred dollars. If the undertaking on appeal is not filed within the time specified, or if the undertaking filed is found insufficient, and if the action is not yet docketed with the Supreme Court, an undertaking may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file an undertaking may be made only in the Supreme Court. The undertaking for costs herein provided may be combined in a single document with a supersedeas bond under Rule 7.

Advisory Committee's Note

Rules 7 and 8 of the federal draft contain provisions for appeal bonds and the stay of judgments and orders. These provisions are not followed in the Rule. Rather Rules 6, 7 and 8 hereof are substituted. These provisions are believed to be more in accord with state practice and to better fit into Montana statutes than do the provisions of the federal draft. This Rule supersedes R.C.M. 1947, §§ 93-8005, 93-8006, 93-8012, 93-8015, and compares with Federal Rule 73(c) and (e).

The amount of the undertaking has remained at $300 since 1895, and the Rule would increase it to $500. Also, express provision is made for corporate sureties as may be authorized by law. Such authorization is found in R.C.M. 1947, § 93-8711.

RULE 7. Stay of Judgment or Order Pending Appeal.

(a) Upon entry of a judgment or order a party may apply to the district court on notice or ex parte for a stay of the execution of the judgment or order. The court in its discretion may grant said stay for such period of time and under such conditions as the court deems proper, including restraining the party from disposing of, encumbering, or concealing his property. Upon service of notice of appeal, if the court has made no such order or the appellant desires a stay for a longer period than ordered, he may present to the district court and secure its approval of a supersedeas bond which shall have such surety or sureties as are required for an undertaking for costs on appeal prescribed by Rule 6(a). The bond shall be conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment or order is affirmed, and to satisfy in full such modification of the judgment or order and such costs, interest, and damages as the Supreme Court may adjudge and award. When the judgment or order is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment or order remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the district court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment or order determines the disposition of property in controversy as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. On application, the Supreme Court in the interest of justice may suspend, modify, restore, or grant any order made under this subdivision.

(b) If the judgment or order appealed from directs the sale of perishable property, the district court may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the Supreme Court.

(c) No stay of proceedings shall be allowed upon a judgment or order which adjudges the defendant guilty of usurping, or intruding into, or unlawfully holding public office, civil or military, within this state; or which grants a writ of mandamus, or of prohibition, against a tribunal, corporation, public officer, or board, commanding certain acts to be done which ought to be done by such tribunal, corporation, public officer, or board, and not involving the payment or allowance of money or its equivalent.

Advisory Committee's Note

This Rule supersedes subdivisions (a) and (d) of Rule 62 of the Montana Rules of Civil Procedure. It also supersedes § 93-8013 insofar as applicable to appeals from district courts to the Supreme Court. However, since these Rules do not apply to appeals from police and Justices' courts, § 93-8013 is not superseded insofar as it provides that in cases where an undertaking is required on appeal by the provisions of §§ 93-7901 to 93-7908, "a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and . . . the undertaking or deposit may be waived by the written consent of the respondent." Also § 93-8014 is superseded, and subdivision (c) of this Rule is patterned after the last part of that section.

The provision of this Rule that, upon entry of a judgment or order a party may apply to the district court on notice or ex parte for a stay of execution, is designed to afford time to obtain a supersedeas bond during which the status quo is maintained by court order. The power of the Supreme Court recognized by the last sentence of subdivision (a) supplements the power of the district court.

RULE 8. Sureties and Their Justification.

(a) In cases where an undertaking on appeal or supersedeas bond with sureties is required, the provisions of R.C.M. 1947, sections 93-8710 to 93-8715, inclusive, apply. By entering into an undertaking on appeal or supersedeas bond given pursuant to Rules 6 and 7, the surety submits himself to the jurisdiction of the district court and irrevocably appoints the clerk of the district court as his agent upon whom papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of any independent action. The motion and such notice of the motion as the district court prescribed may be served on the clerk of that court, who shall forthwith mail copies to each surety whose address is known.

(b) A party may except to the sufficiency of the sureties to any bond or undertaking mentioned in this Rule at any time within 30 days after the filing of such bond or undertaking; and unless they or other sureties, within 20 days after service of notice of such exception, justify before a judge of the district court, or the clerk thereof, upon 5 days' notice to the other parties of the time and place of justification, execution of the judgment or order appealed from is no longer stayed.

Advisory Committee's Note

The provisions of subdivision (a) of the Rule with respect to proceedings against sureties is patterned after Rule 8(b) of the federal draft. Subdivision (b) of the Rule follows the existing Montana practice provided by R.C.M. 1947, § 93-8013, but the language is changed to avoid confusion where there are cross-appeals or mixed forms of relief and to make it clear that either appellant

or respondent, or both, may except to the sufficiency of sureties on a bond or undertaking furnished by the other.

RULE 9. The Record on Appeal.

(a) Composition of the Record on Appeal. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

(b) The transcript of Proceedings; Duty of Appellant to Order; Notice to Respondent if Partial Transcript is Ordered; Costs of Producing. Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory, or to support a specific finding of fact by the trial court, is to be raised on the appeal by the appellant, he shall be under a duty to include in the transcript all evidence relevant to such verdict, answer or finding. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues which he intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

The cost of producing the transcript shall be paid by the appellant, or he shall make satisfactory arrangements with the reporter for the payment of such cost; but, if the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, he shall advise the respondent, and the district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

The reporter shall certify the correctness of the transcript.

(c) Statement of the Evidence or Proceedings When No Report Was Made or When the Transcript is Unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days from the hearing or trial or such time extended as the district court may

for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the district judge who handled the proceedings, and as settled and approved shall be included by the clerk of the district court in the record on appeal. A judge may settle and approve such record after he ceases to be a judge. If such judge before the statement is settled and approved dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle and approve the statement, it shall be settled and approved in such manner as the Supreme Court may direct.

(d) Agreed Statement as the Record on Appeal. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the Supreme Court as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Rule 10. Copies of the agreed statement may be filed as the appendix required by Rule 25.

(e) Correction or Modification of the Record. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the Supreme Court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

Advisory Committee's Note

This Rule is patterned after Rule 10 of the federad draft.

Subdivision (a). This subdivision provides for the use of the original trial record as the official record on appeal, and judgment rolls are nowhere provided for in these Rules. This use of the trial record is now provided for in all federal circuit courts.

Subdivision (b). The Federal Advisory Committee's Note states: "The appellant is required to serve a statement of the issues which he intends to present on appeal if only a part of the proceedings is transcribed solely to allow the appellee to determine whether the partial transcript will be adequate for the determination of the issues presented by the appeal. Such a statement is not the equivalent of an assignment of errors, which is nowhere required in the proposed rules, and the statement would not result in limiting the issues on appeal. The precise statement of the issues presented by the appeal is to be made in the brief. An appellee who can show that he was misled by the statement required by this subdivision and in consequence failed to designate for transcription material parts of the reported proceedings may seek relief under subdivision (e) of this rule."

The second and third sentences of this subdivision following the title are added to the federal draft to make the duty which rests on the appellant more specific. Also, the second paragraph of this subdivision has been expanded to afford protection to an appellant against payment of costs of a transcript of unnecessary portions of the proceeding ordered by a respondent. And the last paragraph, requiring the reporter to certify the correctness of the transcript, has been added to the federal draft.

Subdivision (c). The provision of the federal draft for settlement has been expanded, patterned after § 93-5508; also, because memories are short, there has been added a time limit for the preparation of the statement.

Subdivisions (d) and (e) are the same as the provisions of the federal draft, adjusted to the Montana court system.

RULE 10. Transmission of the Record.

(a) Time for Transmission; Number of copies of transcript; Duty of Appellant. The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the Supreme Court within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under subdivision (c) of this Rule. Six copies of each transcript must be lodged with the Clerk of this Court for filing. Promptly after filing the notice of appeal the appellant shall comply with the provisions of Rule 9(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is filed, each appellant shall comply with the provisions of Rule 9(b) and this subdivision, and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

(b) Duty of Clerk to Transmit the Record. When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the Supreme Court. The clerk shall number the documents comprising the record and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. Documents in bulky containers and physical

exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the Supreme Court. A party must make advance arrangements with the clerk of the district court for the transportation of bulky or weighty exhibits and with the clerk of the Supreme Court for their receipt. Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the Supreme Court. The clerk of the district court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the Supreme Court.

(c) Extension of Time for Transmission of the Record; Reduction of Time. The district court may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal. If the district court is without authority to grant the relief sought or has denied a request therefor, the Supreme Court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond his control or to circumstances which may be deemed excusable neglect. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given.

The district court or the Supreme Court may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

(d) Retention of the Record in the District Court by Order of Court. The Supreme Court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

If the record is retained in the district court by order of either court, the clerk of the district court shall retain it subject to the

order of the Supreme Court, and transmission of the copy of the docket entries shall constitute transmission of the record.

(e) Stipulation of Parties that Parts of the Record be Retained in the District Court. The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the Supreme Court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(f) Record for Preliminary Hearing in the Supreme Court. If prior to the time the record is transmitted a party desires to make in the Supreme Court a motion for dismissal, for a stay pending appeal, for additional security on the undertaking on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the district court at the request of any party shall transmit to the Supreme Court such parts of the original record as the party shall designate.

Advisory Committee's Note

This Rule is taken from Rule 11 of the federal draft.

Subdivision (a). This subdivision fixes the time for transmission rather than for filing at 40 days after the filing of the notice of appeal, thus enabling the parties to know with certainty precisely when the complete record must be transmitted to the Supreme Court. The only justification for delay between filing the notice of appeal and the transmission of the record to the Supreme Court is the time required for securing a transcription of the trial proceedings. If the appellant is prevented from securing the necessary transcript within the 40-day period by circumstances beyond his control, he may seek an extension of time for transmitting the record.

The requirement that the appellant take any other action necessary to enable the clerk to assemble and transmit the record emphasizes the primary responsibility of the appellant for effecting timely transmission of the record. His responsibilities include, for example, the payment of any required fee or charge.

Subdivision (b). The appellant is allowed 40 days between the filing of the notice of appeal and the transmission of the record in order to allow him to secure the necessary transcript. If the transcript is available sooner, the allowance is unnecessary, and either party may oblige the clerk of the district court to transmit the record forthwith. On the other hand, unless the record contains the necessary transcript, the clerk is not to transmit it.

Subdivision (c). Cause for extension of the time by either the district or the Supreme Court must be shown. The final sentence permits any party to expedite the appeal in cases in which the record is complete by obtaining an order that the record be transmitted and the appeal docketed at a date earlier than otherwise allowed or fixed.

Subdivision (d). This subdivision permits the record to be retained in the district court by order of the Supreme Court, or

order of the district court subject to the order of the Supreme Court. Especially in cases where the judgment or order does not dispose of the entire litigation, retention of the record in the district court may be a convenience for counsel and the district court. In some cases there may be no need for the transmission of the record, and the labor and expense of transmission may be saved.

Subdivision (e). This subdivision permits parties to stipulate against transmission of designated parts of the record free from the fear that a mistake may substantially affect the scope of the appeal. The final sentence makes it clear that a stipulation that designated parts of the record not be transmitted in no way diminishes the record itself. In effect, a party may at any time revoke his stipulation against transmission of parts of the record.

Subdivision (f). The substance of this subdivision was taken from FRCP 75(j).

RULE 11. Docketing the Appeal; Filing of the Record.

(a) Docketing the Appeal. Within the time allowed or fixed for transmission of the record, the appellant shall pay to the clerk of the Supreme Court the fee for filing the record on appeal fixed by section 82-503 of the 1947 Revised Codes of Montana, and the clerk shall thereupon enter the appeal upon the docket. If an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the district court with such addition as is necessary to indicate the identity of the appellant.

(b) Filing of the Record. Upon receipt of the record by the clerk of the Supreme Court following its timely transmittal, and after the appeal has been timely docketed, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(c) Dismissal for Failure of Appellant to Cause Timely Transmission or to Docket Appeal. If the appellant shall fail to cause timely transmission of the record or to pay the filing fee if a filing fee is required, any respondent may file a motion in the Supreme Court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and by proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal. The clerk shall docket the appeal for the purpose of permitting the court to entertain the motion, without requiring payment of the filing fee, but the appellant shall not be permitted to appear without payment of the fees unless he is otherwise exempt

therefrom. Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

Advisory Committee's Note

This Rule is patterned after Rule 12 of the federal draft, with adjustments to state practice. The provision of § 82-503 for a fee for filing the "transcript" on appeal will apply to the "record" on appeal pursuant to these Rules.

The appellant's responsibility with respect to docketing and filing are specified. The appellant may pay the filing fee at any time after filing the notice of appeal, and it is then the duty of the clerk of the Supreme Court to enter the appeal on the docket. The appellant's responsibility is (1) to pay the filing fee at or before the time allowed or fixed for transmission of the record, and (2) to insure that the record is transmitted to the Supreme Court within the time allowed or fixed for its transmission. The clerk of the Supreme Court is directed to assign to cases on appeal the title which was used in the district court in the interest of facilitating future reference and citation and location of cases in indexes.

RULE 12. Effect of Dismissal.

The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

Advisory Committee's Note

This incorporates R.C.M. 1947, § 93-8020.

RULE 13. Acts of Executors, Administrators or Guardians Valid When Appointment Vacated.

When the judgment or order appointing an executor, or administrator, or guardian is reversed on appeal, for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such executor, or administrator, or guardian, if he have qualified, are as valid as if such judgment or order had been affirmed.

Advisory Committee's Note

This incorporates R.C.M. 1947, § 93-8016.

RULE 14. Ruling Against Respondent May be Reviewed.

Whenever the record on appeal shall contain any order, ruling, or proceeding of the trial court against the respondent, affecting his substantial rights on the appeal of said cause, together with any required objection or exception of such respondent, the Supreme Court on such appeal shall consider such orders, rulings, or proceedings, and the objections and exceptions thereto, and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record.

And no cause shall be reversed upon appeal by reason of any error committed by the trial court against the appellant, where the record shows that the same result would have been attained had such trial court not committed an error or errors against the respondent.

Advisory Committee's Note

This incorporates R.C.M. 1947, § 93-8023, but eliminates references to bills of exceptions and statements of the case properly settled because these Rules nowhere provide for such bills and statements.

RULE 15. Remedial Powers of the Supreme Court.

When the judgment or order is reversed or modified, the Supreme Court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on an appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

Advisory Committee's Note

This incorporates R.C.M. 1947, § 93-8024, substituting "Supreme Court" for "appellate court" and eliminating the provision for damages when the appeal is made for delay. Rule 32 covers the matter of damages.

RULE 16. Remittitur Must be Certified to the Clerk of the District Court.

When judgment is rendered upon the appeal, it must be certified by the clerk of the Supreme Court to the clerk of the district court from which the appeal is taken. The clerk of the district court must enter at length in the records of the court the certificate received. Also, in cases of appeal from a judgment, the clerk must enter a minute of the judgment of the Supreme Court on the docket against the original entry; and in cases of appeal from an order, he must enter a minute against the entry of the order appealed from, containing a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified by the Supreme Court on appeal.

Advisory Committee's Note

This incorporates the substance of R.C.M. 1947, § 93-8025, but eliminates references to the judgment roll, which is nowhere provided for in these Rules.

TITLE III. ORIGINAL PROCEEDINGS: EXTRAORDINARY WRITS

RULE 17. Acceptance and Manner of Conducting.

(a) When Accepted. The Supreme Court is an appellate court

but it is empowered by the Constitution of Montana to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. The institution of such original proceedings in the Supreme Court is sometimes justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making due consideration in the trial courts and due appeal to this Court an inadequate remedy, or when supervision of a trial court other than by appeal is deemed necessary or proper.

(b) How Commenced and Conducted. Proceedings commenced in the Supreme Court originally to obtain writs of habeas corpus, injunction, review, mandate, quo warranto, supervisory control, and other remedial writs or orders, shall be commenced and conducted in the manner prescribed by the Code of Civil Procedure for the conduct of such or analogous proceedings and by these additional rules. All papers filed shall conform to the requirements of Rule 27.

(c) Applications; when Filed. The moving party's application shall be filed with the Clerk of the Supreme Court one hour prior to its presentation to the Court.

(d) Applications; What to Contain. The application for the issuance of any of the above writs or orders must set forth, in addition to the other requisite matters, the particular questions and issues anticipated or expected to be raised in the proceeding, and also the fact which renders it necessary and proper that the writ should issue originally from the Supreme Court; the said matters will be taken into consideration by the Court in determining the necessity and propriety of accepting jurisdiction and granting the alternative writ or order to show cause. Each application shall also set forth as exhibits, without repetition of title of court and cause, a copy of each judgment, order, notice, pleading, document, proceeding or court minute referred to in the application, or necessary to make out a prima facie case or to substantiate the pleading or conclusion or legal effect. A Memorandum of Authorities must be filed with the application.

(e) Applications; How and When Presented. The Supreme Court will receive and hear original applications in open court on any day when the Court is in session; but at least an hour's prior notice of such presentation shall be given by counsel to the Chief Justice or Acting Chief Justice. Not over fifteen minutes shall be allowed for the presentation of any such application unless on prior request further time is granted.

(f) Issuance of Alternative Writ or Order to Show Cause. This Court will, as promptly as possible after the presentation of an application, either dismiss the same, issue an alternative writ, order to

show cause, or such other remedial writ or order as it deems expedient.

(g) Briefs. At or before the time set for final hearing, each party shall serve and file his brief in full conformance with Rules 20, 23 and 27, and containing a statement of the facts and of the points of law applicable, with the authorities relied upon.

(h) Hearing; When Had. Unless otherwise ordered the hearing shall be had at the time fixed for the return. At or prior to said return time the opposing party shall serve and file, without waiver, any and all pleadings and motions desired to be presented, including answer or return, and all issues shall be argued at the hearing, the applicant opening and closing, and the parties being allowed the same time as upon argument of appeals. If testimony becomes necessary a reference will be ordered.

Advisory Committee's Note

This incorporates Montana Supreme Court Rule IV, with changes in subdivisions (e) and (f) designed to recognize that on original applications the Court is not limited to the issuance of alternative writs or orders to show cause, but may issue whatever remedial writ or order it deems expedient.

TITLE IV. APPEALS IN FORMA PAUPERIS

RULE 18. Applications and Manner of Proceeding.

(a) Application to District Court. A party who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed together with an affidavit showing, in the detail prescribed by Form 2 of the Appendix of Forms, his inability to pay the fees and costs of the appeal or to give security therefor, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. If the motion is granted, the party may proceed on appeal without further application to the Supreme Court and without payment of fees or costs or the giving of security therefor. If the motion is denied, the district court shall state the reasons for the denial.

(b) Application to the Supreme Court. If the motion for leave to proceed on appeal in forma pauperis is denied by the district court, a motion for leave so to proceed may be filed in the Supreme Court within 30 days after entry of the order of denial. The motion shall be accompanied by a copy of the affidavit filed in the district court and of the statement of reasons for denial given by the district court.

(c) Form of Briefs, Appendices and Other Papers. Parties allowed to proceed in forma pauperis may file briefs, appendices and other papers in typewritten form.

Advisory Committee's Note

This Rule is patterned after Rule 23 of the federal draft, but omits the last clause of the federal draft reading "and may request that the appeal be heard on the original record without an "appendix." This change is made because these Rules do not adopt the appendix system of Rule 30 of the federal draft. See Rule 25. This Rule is believed to be consistent with R.C.M. 1947, § 93-8625.

TITLE V. GENERAL PROVISIONS

RULE 19. Record of Commissions and Oaths.

(a) Commissions and oaths. The commissions and oaths of the Justices and the Clerk of this Court, and the Attorney General shall be recorded in the records of this Court.

(b) Minutes of Court. The minutes of this Court shall be approved by the Chief Justice (or in his absence by the Associate Justice having the shortest term to serve), and attested by the Clerk.

Advisory Committee's Note

This incorporates Montana Supreme Court Rule I.

RULE 20. Filing and Service.

(a) Filing. Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him, in which event he shall note thereon the dates of filing and shall thereafter transmit it to the clerk.

(b) Service of all Papers Required. Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) Manner of Service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of Service. Papers presented for filing shall contain acknowledgement of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

Advisory Committee's Note

This Rule is taken from Rule 25 of the federal draft, but the phrase "including any transcript" has been added to subdivision (b) to make it clear that copies of any transcript are to be served on all parties. The first paragraph of Montana Supreme Court Rule III is superseded.

RULE 21. Computation and Extension of Time.

(a) Computation of Time. In computing any period of time prescribed by these Rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Extension of Time. The court for good cause shown may upon motion extend the time prescribed by these Rules or by its order for doing any act, and may thereby permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; but the court may not extend the time for filing a notice of appeal, except as provided in Rule 5.

(c) Additional Time After Service by Mail. Whenever a party is required or permitted to do any act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

Advisory Committee's Note

This Rule is patterned after Rule 26 of the federal draft. There are omitted provisions of the federal draft with respect to petitions for allowance, applications for permission to appeal, appeals from advisory agencies, and a definition of "legal holiday." A definition of "legal holiday" is contained in R.C.M. 1947, § 19-107.

It is believed that these provisions are consistent with R.C.M. 1947, § 90-407.

RULE 22. Motions.

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Motions for procedural orders may be determined ex parte. The Supreme Court may authorize disposition of motions for procedural orders by a single judge. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the court

may direct. Motions, supporting papers and any response thereto may be typewritten.

At the time of filing a motion counsel shall present a proposed order, together with sufficient copies for service upon all counsel of record.

Advisory Committee's Note

This Rule supersedes Montana Supreme Court Rule XI. It is patterned after Rule 27 of the federal draft, but the last sentence of the federal draft requiring the filing of three copies of motions and supporting papers has been omitted. Also, there has been added as a last paragraph the amendment of the Montana Supreme Court Rule XI, effective January 1, 1965.

RULE 23. Briefs.

(a) Brief of the Appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case and its disposition in the court below, e.g.: "The plaintiff brought this action in the district court to recover damages for the wrongful death of her husband. The jury returned a verdict for the plaintiff. On motion of the defendant the trial judge entered judgment for the defendant n. o. v. on the ground that there was no evidence to support a finding of negligence on the part of the defendant. From this judgment the plaintiff appeals."

There shall follow a statement of the facts relevant to the issues presented for review, with references to the pages of the parts of the record at which material facts appear (see subdivision (e)).

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and pages of the record relied on.

(5) A short conclusion stating the precise relief sought.

(b) Brief of the Respondent. The brief of the respondent shall conform to the requirements of subdivision (a) (1)-(4), except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

(c) Reply Brief. The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to

new matter raised in the brief of the respondent. No further briefs may be filed except with leave of court.

(d) References in Briefs to Parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such formal designations as "appellant" and "respondent." It promotes clarity to use names or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) References in Briefs to the Record. Whenever a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e. g., Answer, p. 7; Motion for Summary Judgment, p. 3; Transcript, p. 231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, etc. If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form. No such reproduction is required, unless ordered by the Supreme Court.

(g) Length of Briefs and Cost. Except by permission of the court briefs shall not exceed 50 pages of standard typographic printing or 70 pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. For purposes of assessing costs under R.C.M. 1947, section 93-8606, reasonable costs shall be limited as follows: For appellant's brief fifty (50) pages; for respondent's brief forty (40) pages; for reply brief fifteen (15) pages. In addition, reasonable costs for briefs shall be limited to $250 for appellant's brief and $200 for respondent's brief.

(h) Briefs in Cases Involving Cross Appeals. If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rules 25 and 26, unless the parties otherwise agree or the court otherwise orders. The brief of the respondent shall contain the isues and argument involved in his appeal as well as the answer to the brief of the appellant.

Advisory Committee's Note

This Rule is patterned after Rule 28 of the federal draft, adjusted to state practice. The second paragraph of subdivision (e) of the federal draft is omitted, since these Rules do not adopt the "appendix" system of Rule 30 of the federal draft. See Rule 25.

Also, in the federal draft, subdivision (f) requires reproduction

of statutes, rules, regulations, etc. This has been changed, so that reproduction is permissive, unless ordered by the Supreme Court.

RULE 24. Brief of an Amicus Curiae.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

Advisory Committee's Note

This Rule is taken from Rule 29 of the federal draft. It follows the practice of a majority of federal circuits in requiring leave of court to file an amicus brief unless the litigants consent to its filing.

RULE 25. The Appendix to the Briefs.

(a) Use of an Appendix. At any time before final decision, the Supreme Court may order an appendix to any brief. Also, either the appellant or respondent may, if he deems it desirable, prepare, file and serve with his brief an appendix.

(b) Contents of the Appendix. Unless otherwise ordered by the Supreme Court, an appendix shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant pleading and relevant portions of the charge, finding and opinion; (3) the judgment, order or decision in question; and (4) such other parts of the record as any party deems it essential for the judges of the court to read in order to decide the issues presented. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference or examination and shall not engage in unnecessary designation.

(c) Arrangement of the Appendix. At the beginning of the appendix there shall appear a chronological list of the parts of the record which it contains. Each part of the record shall be listed by the descriptive title given to that part by the reference made to it in the briefs. The page or pages of the appendix at which each part of the record thus listed appears shall be set out opposite each listing in a column at the right, so as to permit immediate location in the appendix of the parts of the record referred to in the briefs and contained in the appendix.

The relevant docket entries in the proceeding below shall follow the list of contents. Thereafter, the parts of the record shall be set out in chronological order. The original paging of each part of the record set out in the appendix shall be indicated by placing in brackets the number of the original page at the place where that

page begins. Omissions in the text of papers or of testimony must be indicated by asterisks. A question and its answer may be contained in a single paragraph.

(d) Reproduction of Exhibits. Exhibits may be contained in a separate volume, suitably indexed.

Advisory Committee's Note

Rules 30 and 31 of the federal draft, require post-brief appendices, unless dispensed with by court rule or order. The Rule does not follow the federal draft at this point. Rather, under this Rule the Supreme Court may order an appendix, or either party may if he chooses use an appendix. When an appendix is used it is to be filed and served with the brief.

RULE 26. Filing and Service of Briefs.

(a) Time for Filing Briefs. The appellant shall serve and file his brief within 30 days after the date on which the record is filed. The respondent shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but, except for good cause shown, a reply brief must be served and filed at least 3 days before argument.

(b) Number of Copies to be Filed and Served. Ten copies of each brief shall be filed with the Clerk of the Supreme Court unless otherwise ordered by the Court, and one copy of each brief shall be served on counsel for each party separately represented. The Clerk will not accept a brief for filing unless it is accompanied by acknowledgment or proof of service as required by Rule 20.

(c) Consequences of Failure to File Briefs. If an appellant fails to file his brief within the time provided by this Rule, or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the Court.

Advisory Committee's Note

This Rule is patterned after Rule 31 of the federal draft.

Subdivision (a) follows the time fixed for filing of briefs provided in the federal draft, and that is the time now allowed by a majority of the federal circuits.

Subdivision (b) of the federal draft is omitted, since it provides a post-brief time for filing the appendix. Under Rule 25 an appendix must be filed and served with the brief, unless otherwise ordered by the Supreme Court.

Subdivision (b) of this Rule is patterned after subdivision (c) of the federal draft. The number of copies to be filed and served, however, are adjusted to fit state practice and the present requirement of Montana Supreme Court Rule II.

Subdivision (c) of this Rule follows subdivision (d) of Rule 31 of the federal draft.

RULE 27. Form of Briefs, the Appendix, Motions and Other Papers.

(a) Form of Briefs, Appendices and Separate Volumes of Exhibits. Briefs, appendices and separate volumes of exhibits may be produced by standard typographic printing or by any duplicating or copying process capable of producing a clear black image on white paper. Typewritten copies of briefs, appendices and separate volumes of exhibits may not be submitted without permission of the Chief Justice of the Supreme Court, except in behalf of parties allowed to proceed in forma pauperis. Pica solid is the smallest letter and the most compact form of composition allowed for all printed matter. Briefs, appendices and separate volumes of exhibits shall be on white uncalendered book paper in book or booklet form. If produced by the standard typographic printing process, the pages shall be ten inches long and seven inches wide, with a margin on the outer edge not less than one inch wide and on the inner edge not less than two inches wide. If produced by a duplicating or copying process, the pages shall be eleven inches long and eight and one-half inches wide, with a margin on the outer edge not less than one inch wide and on the inner edge not less than two inches wide. The pages shall be fastened at the side and numbered at the top.

(b) Typewritten Papers and Motions. Papers not required to be produced in a manner prescribed by subdivision (a) of this Rule shall be plainly and legibly written by a typewriter with a new black ribbon and new black carbon paper of good grade, in double spacing, except that quotations may be single spaced, on one side only of white typewriter paper, eight and one-half inches wide and thirteen inches long, numbered at the bottom, with a ruled margin of one and one-half inches on the left-hand side of the page and one inch on the right-hand side, and numbered lines, not more than thirty-two lines to the page. The pages shall be bound at the left-hand side into volumes not containing more than two hundred fifty pages; provided, however, that if the pages number fifty or less they may be bound at the top.

In collating typewritten papers the copies shall not be mixed, but each copy shall consist throughout of uniform pages. Each page of every copy shall be opaque and each line of print thereon plainly legible. The difficulty of examining transparent, illegible and non-uniform typewritten copies has become so great that this rule will be strictly applied and papers not complying with it will not be received.

(c) First Page and Cover. All papers shall be bound in cardboard or pasteboard covers, unless bound at the top under subdivision (b) of this Rule, in which case they may be bound in cover paper. On the first page and cover of all papers must be stated the title of

this Court, the title of the case as in the court below, adding to the words "Plaintiff" and "Defendant," the words "Appellant" and "Respondent" as the case may require, the names of counsel for appellant and respondent, the title of the papers, as "Appellant's Brief," "Appendix to Appellant's Brief," etc., and the venue from which the appeal is taken.

Advisory Committee's Note

Rule 32 of the federal draft is adjusted to conform to the paper and forms prescribed for state practice and Montana Supreme Court Rule II, as amended effective January 1, 1965. The provisions requiring the use of pica type and two typewritten originals are stricken as being obsolete or unnecessary.

RULE 28. Prehearing Conference.

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceedings by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issue to those not disposed of by admission or agreements of counsel, and such order when entered controls the subsequent course of the proceedings, unless modified to prevent manifest injustice.

Advisory Committee's Note

This Rule is taken from Rule 33 of the federal draft.

RULE 29. Oral Argument.

(a) Notice of Hearing; Postponement. The Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) Time Allowed for Argument. Upon oral argument of an appeal or original proceeding, 40 minutes will be allowed appellant or applicant and 30 minutes to respondent. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed reasonably in advance of the date fixed for hearing. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) Order and Content of Argument. The appellant or applicant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument.

Counsel will not be permitted to read at length from briefs, records or authorities.

(d) Cross and Separate Appeals. A cross or separate appeal shall be argued with the initial appeal at a single hearing, unless the court otherwise directs. If a case involves a cross appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument at the hearing.

(e) Non-Appearance of Counsel; Failure to File Briefs. If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

(f) Submission on Briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Hearing; Removal. If physical exhibits other than documents are to be used at the hearing, counsel shall arrange to have them placed in the court room before the court convenes on the date of the hearing. After the hearing counsel shall cause the exhibits to be removed from the court room unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

Advisory Committee's Note

This Rule is patterned after Rule 34 of the federal draft, but the time provisions are more liberal than those of the federal draft which allows 30 minutes to each side. It is intended that the time be afforded to opposing interests rather than to individual parties, as is true under the federal draft. Thus, if there are multiple appellants they have together but 40 minutes, and multiple respondents have a total of 30 minutes. The 40 minutes for the appellant or applicant may be divided between the opening and closing statement, as the appellant or applicant chooses.

In other particulars this Rule follows the usual practice among the federal circuits.

RULE 30. Entry and Notice of Orders and Judgments.

(a) Entry and Notice. The notation of a judgment or order in the docket constitutes entry thereof. Upon entry of a judgment or order, the clerk shall promptly mail to all parties a copy of the judgment or order, and notice of the date of entry thereof.

Advisory Committee's Note

This Rule is patterned after Rule 36 of the federal draft. The purpose is to clarify what constitutes an entry of a judgment or

order. The provision for mailing by the clerk is for the convenience of the parties but does not affect the time for taking an appeal, which is controlled by Rule 5. As to the entry of judgments, see Rule 58 of M.R.Civ.P.

RULE 31. Interest on Judgments.

If a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was rendered or made in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

Advisory Committee's Note

The language of Rule 37 of the federal draft is modified to conform to R.C.M. 1947, § 93-8622.

RULE 32. Damages for Appeal Without Merit.

If the Supreme Court is satisfied from the record and the presentation of the appeal, that the same was taken without substantial or reasonable grounds, but apparently for purposes of delay only, such damages may be assessed on determination thereof as under the circumstances are deemed proper.

Advisory Committee's Note

The language of Montana Supreme Court Rule XIX is substituted for that of Rule 38 of the federal draft.

RULE 33. Costs.

(a) Costs on Appeal. Costs on appeal will be taxed as provided by R.C.M. 1947, Section 93-8606, and if not otherwise provided by Court in its decision, will automatically be awarded to the successful party against the other party.

(b) Costs of Briefs and Appendices. The cost of printing or otherwise producing briefs and appendices shall be taxable in the Supreme Court at rates not higher than specified in Rule 23(g). A party who desires such costs to be taxed shall state them in a verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after entry of judgment.

(c) Costs Taxable in the District Courts. Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing notice of appeal shall be taxed in the district court as costs of the appeal in favor of the party entitled to costs under this Rule.

(d) Costs in Original Proceedings. Costs in original proceedings, including reviews other than by appeal, will be taxed as pro-

vided by R.C.M. 1947, Sections 93-8602, 93-8603, 93-8604 and 93-8611, and if not otherwise provided by the Court in its decision, will be awarded to the successful party against the other party; provided, however, that costs awarded to plaintiff or relator in special proceedings to review inferior court rulings, orders or judgments will ordinarily be assessed against the real party in interest, namely, the party interested in upholding the inferior court's action, rather than against the state, county, municipality, subdivision, judge or justice.

(e) Unnecessary Costs. Whenever it appears that the successful party has caused any redundant, useless or unnecessary matter to be incorporated in the record, briefs, or appendices, whether on appeal or in a special proceeding, he shall not recover as part of his costs so much of the expense as is occasioned thereby.

(f) Notation by Clerk. The Clerk of the Supreme Court shall, in all cases, include in the order of judgment of affirmance, reversal or modification on appeal, or for the issuance of a peremptory writ in an original proceeding, and in the remittitur, peremptory writ or judgment, a clause awarding costs taxed in the Supreme Court in accordance with this Rule or the special order of this Court, to be recovered after claim and ascertainment or taxation thereof in the manner prescribed by law; and the Clerk shall also furnish therewith an itemized statement of such costs as have been paid by him.

Advisory Committee's Note

This Rule is a combination of Rule 39 of the federal draft and Montana Supreme Court Rule XVIII. With some adjustment of language, subdivision (a) is taken from the Montana Rule; subdivisions (b) and (c) from the federal draft; and subdivisions (d), (e) and (f) from the Montana Rule.

RULE 34. Petitions for Rehearing.

When, in appeals or special proceedings, it is ordered that remittitur, peremptory writ or judgment issue forthwith, no petition for rehearing will be entertained. In all other cases a petition for rehearing may be filed within 10 days after the decision of the Supreme Court has been rendered, unless the time is shortened or enlarged by order, and the adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit, and in no event in excess of 10 days. A petition for rehearing may be presented upon the following grounds and none other: That some facts, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the Court, or that the decision is in conflict with an express statute or controlling decision to which the attention of the Court was not directed. Oral argument in support of the petition will not be permitted. No reply to a peti-

tion for rehearing will be received unless requested by the Court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. Six copies of the petition, produced in accordance with Rule 27(a), shall be filed with the Clerk.

Advisory Committee's Note

This Rule is patterned in part after Rule 40 of the federal draft. However, the first sentence is added from Montana Supreme Court Rule XV, as is the statement of the grounds for the petition and the procedure for serving and filing objections; also the 14 days for filing provided in the federal draft has been shortened to conform to state practice, and the number of copies required has been reduced from 25 to 6. The second sentence provides for filing of the petition within 10 days after "the decision of the Supreme Court has been rendered," rather than after "entry of judgment" as provided by the federal draft. The purpose is to avoid uncertainty as to when a judgment has been entered, which might exist under the language of the federal draft where the mandate of the Supreme Court is returned to the district court and there entered.

RULE 35. Notice and Copy of Decision; Remittitur; Mandate from United States Supreme Court.

(a) Notice and Copy of Decision to be Furnished. Upon the decision of a cause, notice thereof, together with a copy of the Court's written decision, will immediately be mailed to counsel for each party.

(b) Remittitur: When Issued, When Copy of Opinion to Accompany. Remittitur may, in cases where it is deemed proper, be ordered forthwith; otherwise the same shall be issued promptly upon expiration of time for filing petition for rehearing, or, if such petition is filed, then upon the denial thereof, unless a modification of the decision is made which permits a further petition for rehearing. A copy of the opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.

(c) Mandate from United States Supreme Court, Procedure Thereon. Upon receipt by the Clerk of the Supreme Court of Montana of a mandate from the Supreme Court of the United States in any case at law or in equity theretofore taken from the Supreme Court of Montana to the Supreme Court of the United States, it shall be the duty of said Clerk forthwith to issue under his hand and the seal of the Supreme Court of Montana a remittitur to the district court by which the judgment was rendered, commanding such court to take such action in the premises as by the mandate shall be proper, and said remittitur shall also contain therein a recital in haec verba of the said mandate, and all the costs subsequent to the appeal from said District Court shall be taxed in such remittitur.

Advisory Committee's Note

This Rule incorporates Montana Supreme Court Rules XIV, XXI, and XXII.

RULE 36. Voluntary Dismissal.

If the parties to an appeal or other proceeding shall sign and file with the clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, and shall give to each party a copy of the agreement filed; but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the court. If an appeal has not been docketed the appeal may be dismissed by the court from which the appeal was taken upon the filing in that court of a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant.

Advisory Committee's Note

This Rule is taken from Rule 42 of the federal draft.

RULE 37. Substitution of Parties.

(a) Death of a Party. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the Supreme Court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the Supreme Court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 20. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this subdivision.

(b) Substitution for Other Causes. If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) Public Officers; Death or Separation from Office.

(1) When a public officer is a party to an appeal or other

proceeding in the Supreme Court in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding he may be described as a party by his official title rather than by name; but the court may require his name to be added.

Advisory Committee's Note

This Rule is taken from Rule 43 of the federal draft.

RULE 38. Cases Involving Constitutional Questions Where the State is Not a Party.

It shall be the duty of counsel who challenges the constitutionality of any Act of the Montana Legislature in any suit or proceeding in the Supreme Court to which the State of Montana, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record to give immediate notice in writing to the Court of the existence of said question, specifying the section of the Code or the chapter of the Session Law to be construed. The Clerk shall thereupon certify such fact to the Attorney General of the State of Montana.

Advisory Committee's Note

This Rule is patterned after Rule 44 of the federal draft.

RULE 39. Calendar; Withdrawal of Records.

(a) Placing Causes Upon Calendar. Thirty days after the appellant's brief has been filed, the cause shall be placed on the calendar as ready for oral argument.

(b) Setting Causes for Argument. As often as found convenient, causes on the calendar will be set for argument by the Court in the chronological order in which they have been placed on the calendar, except such causes as are determined entitled to precedence or as otherwise ordered by the Court. Oral arguments will not be heard during the months of July and August.

(c) Advancement of Causes. Appeals from orders dissolving, refusing to dissolve, granting or refusing to grant writs of injunction, appeals from orders dissolving or refusing to dissolve attachments, appeals from orders appointing or refusing to appoint receivers, appeals from orders or judgments holding appellant in custody, and workmen's compensation appeals, are entitled to precedence and will, upon motion of either party, be advanced on the calendar.

(d) Permission to Take Record From Clerk's Office. The records and other papers of the Supreme Court shall not be taken therefrom except by counsel pursuant to a written order of a Justice of the Court, which order shall specify the time the same may be retained out of the Clerk's office; provided, that the Court or a Justice thereof may require the same to be returned within a shorter period upon notice. The Clerk shall preserve each order and counsel's receipt until the papers therein mentioned shall be returned.

Advisory Committee's Note

Montana Supreme Court Rules XIII and XVI have been substituted for the provisions of Rule 45 of the federal draft.

RULE 40. Appeals From Injunction Orders.

Upon appeal from an order dissolving or refusing an injunction, if the appellant desires to continue in force the injunction order dissolved by the district court, or to obtain such injunction order pending the appeal, he shall apply to the district court under Rule 62 of the Montana Rules of Civil Procedure. In the event the relief there requested be not granted he may file in the Supreme Court his sworn application, setting forth the proceedings appealed from and the relief desired, and present with it to the Supreme Court, a verified copy of the affidavits or evidence used on the hearing in the district court. Such application will be heard ex parte and without argument, and the Court, upon such record will make such order in the premises as may be proper.

Advisory Committee's Note

This Rule incorporates the substance of Supreme Court Rule XXIII, as amended effective April 3, 1963.

RULE 41. Statutes and Rules Amended.

(a) Rule 72 of the Montana Rules of Civil Procedure is amended to read as follows:

"When an appeal is permitted by law from a district court to the Supreme Court of Montana, or in any case where original proceedings are commenced in the Supreme Court, such appeal or original proceeding shall be taken, perfected, and prosecuted pursuant to the provisions of the Montana Rules of Appellate Civil Procedure and controlling statutes to the extent that they are not superseded by the Montana Rules of Appellate Civil Procedure."

(b) R.C.M. 1947, Section 93-5708, is amended to read as follows:

"Immediately after the entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all real property

of the judgment debtor not exempt from execution in the county, owned by him at the time, or which he may afterward acquire, until the lien ceases. The lien continues for six years, unless the judgment be previously satisfied."

(c) R.C.M. 1947, Section 93-8001, is amended to read as follows:

"A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed in sections 93-7901 to 93-7908, and by the Rules of Appellate Civil Procedure, and not otherwise."

(d) R.C.M. 1947, Section 93-8002, is amended to read as follows:

"A party aggrieved may appeal in the cases prescribed in sections 93-7901 to 93-7908 and the Rules of Appellate Civil Procedure."

(e) R.C.M. 1947, Section 93-8013, is amended to read as follows:

"In all cases where an undertaking is required on appeal by the provisions of sections 93-7901 to 93-7908, a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and in all such cases the undertaking or deposit may be waived by the written consent of the respondent."

(f) R.C.M. 1947, Section 93-9905, subdivision 3, is amended to read as follows:

"3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use. The plaintiff or defendant, or any party interested in the proceedings, can appeal to the Supreme Court from any finding or judgment made or rendered under this chapter, as in other cases. Such appeal does not stay any further proceedings under this chapter, except that the district court on motion or ex parte may grant a stay for such period of time and under such conditions as the court deems proper."

Advisory Committee's Note

Subdivision (a) of this Rule merely adapts the Montana Rules of Civil Procedure to these Appellate Rules.

Subdivision (b) eliminates the reference in section 93-5708 to judgment rolls, which are nowhere provided for in these Rules.

Subdivisions (c), (d), (e) amend statutes which contain references to appeals from justices' courts to district courts, so as to preserve the existing procedure applicable to such appeals.

Subdivision (f) amends the provision of section 93-9905 to permit the district court to stay proceedings on appeals in eminent

domain cases, as is permitted by Rule 7(a) of these Rules in other cases. See Tables A, B, C hereafter for reference to other amendments.

RULE 42. Applicability in General.

(a) Special Statutory Proceedings. The statutory proceedings listed in Table A of the Montana Rules of Civil Procedure and any other special statutory proceedings, whether or not listed in said Table A, are excepted from these Rules insofar as they are inconsistent or in conflict with the procedure and practice provided by these rules.

(b) Appeals to District Courts. These Rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, which shall govern procedure and practice relating thereto insofar as they are not inconsistent with these Rules.

(c) Rules Incorporated Into Statutes. Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding or listed in any table appended hereto, provides that any act in a civil proceeding in a district court or in the Montana Supreme Court shall be done in the manner provided by law or as in a civil action or as provided by any statute superseded by these Rules, such act shall be done in accordance with these Rules and the procedure thereon shall conform to these Rules, insofar as practicable.

Advisory Committee's Note

This Proposed Rule is patterned after Rule 81 of the Montana Rules of Civil Procedure. It excepts inconsistent special statutory proceedings and appeals to and reviews by the district courts to the extent that they are governed by inconsistent statutes and it is impracticable to incorporate procedures provided by these Rules. But statutes such as sections 93-9302, 93-9303, 93-9718, 93-9719, and 93-9922, which contain catch-all references to the applicability of statutes which have been superseded, are brought into line with these Rules insofar as practicable.

RULE 43. Title; Effective Date; Statutes Superseded.

(a) Title. These Rules shall be known as the Montana Rules of Appellate Civil Procedure and may be cited as M.R.App.Civ.P.

(b) Effective Date and Application to Pending Proceedings. These Rules will take effect on January 1, 1966. They govern all appeals and original proceedings brought after they take effect, and also all further proceedings in appeals and original proceedings then pending, except to the extent that in the opinion of the Supreme Court their application in a particular appeal or original proceeding pending when the Rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the appeal or original proceeding was brought applies.

(c) Statutes and Rules Superseded. Upon the taking effect

of these Rules all statutes and Rules, and parts thereof, in conflict herewith, and the statutes and Rules listed in Tables A, B, and C, insofar as they relate to civil proceedings, are superseded in respect of practice and procedure on appeals from the district courts to the Supreme Court and in original proceedings brought in the Supreme Court.

Advisory Committee's Note

This Rule incorporates provisions similar to those contained in Rules 85 and 86 of the Montana Rules of Civil Procedure. Subdivision (c) refers to statutes and Rules only insofar as they relate to civil proceedings, to make it clear that criminal proceedings are in no way affected by these Rules.

APPENDIX OF FORMS

Form 1. Notice of Appeal to the Supreme Court of the State of Montana from a Judgment or Order of a District Court

IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF .....

A. B. Plaintiff
vs.
C. D. Defendant
Notice of Appeal

Notice is hereby given that C. D., defendant above named, hereby appeals to the Supreme Court of the State of Montana (from the final judgment) (from the order (describing it)) entered in this action on the ..... day of ....., 19.....

(S) .....

.....

Attorney for C. D.
(Address)

Form 2. Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis

IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF .....

A. B. Plaintiff
vs.
C. D. Defendant
Affidavit in Support of Application to Proceed on Appeal Without Prepayment of Costs

I, ..., being first duly sworn, depose and say that I am the ..... in the above-entitled case; that in support of my application to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay

the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

.....

.....

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?
   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.
2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?
   a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.
3. Do you own any cash or checking or savings account?
   a. If the answer is yes, state the total value of the items owned.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
   a. If the answer is yes, describe the property and state its approximate value.
5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

.....

Subscribed and Sworn to before me this ..... day of .....,
19.....

.....
Notary Public

Let the applicant proceed without prepayment of costs.

.....
District Judge

TABLE A

LIST OF STATUTES AND RULES SUPERSEDED OR AMENDED

Statutes (R.C.M. 1947)	R.S.C.M.*	M.R.Civ P.**
Superseded	**Superseded, except as applicable to criminal procedure**	**Superseded**
93-5501		62(a)
93-5503		62(d)
93-5504	I	**Amended**
93-5505	II	72
93-5506	III (1st par.)	
93-5507	IV	
93-5508	VI	
93-5509	VII	
93-5607	VIII	
93-5608	IX	
93-5702	X	
93-5707	XI	
93-8003	XII	
93-8004	XIII	
93-8005	XIV	
93-8006	XV	
93-8011	XVI	
93-8012	XVII	
93-8014	XVIII	
93-8015	XIX	
93-8016	XXI	
93-8017	XXII	
93-8018	XXIII	
93-8019	XXIV	
93-8020		
93-8021		
93-8022		
93-8023		
93-8024		
93-8025		
Amended		
93-5708		
93-8001		
93-8002		
93-8013		
93-9905(3)		

* Rules of the Supreme Court of Montana

** Montana Rules of Civil Procedure

TABLE B

LIST OF RULES OF APPELLATE CIVIL PROCEDURE SUPERSEDING, IN WHOLE OR IN PART, OR AMENDING, STATUTES AND RULES

M.R.App.Civ.P.	Statutes (R.C.M. 1947 secs.) and Rules* superseded or amended
1	93-8001, 93-8002, 93-8003, 93-8017
2	93-8022
3	93-8019, R.S.C.M. XXIV
4	93-8005, 93-8019
5	93-8004
6	93-8005, 93-8006, 93-8012, 93-8015, 93-8019
7	93-5607, 93-8011, 93-8012, 93-8014, M.R.Civ.P. 62(a), 62(d)
8	93-8013
9, 10, & 25	93-5504 to 93-5509, incl., 93-5608, 93-5707, 93-8018, 93-8019, 93-8021 R.S.C.M. VII, VIII, IX, XVIII sub. 3
11	93-8019, R.S.C.M. VI
12	93-8020
13	93-8016
14	93-8023
15	93-8024
16	93-8025
17	R.S.C.M. IV
19	R.S.C.M. I
20	R.S.C.M. III (1st par.)
22	R.S.C.M. XI
23	R.S.C.M. X
26	R.S.C.M. II sub. 4, III (1st par.)
27	R.S.C.M. II
29	93-5702, R.S.C.M. XII
32	R.S.C.M. XIX
33	R.S.C.M. XVIII
34	R.S.C.M. XV
35	R.S.C.M. XIV, XXI, XXII
37	R.S.C.M. XVII
39	R.S.C.M. XIII, XVI
40	R.S.C.M. XXIII
41	M.R.Civ.P. 72, 93-5708, 93-9905 (3), 93-8001, 93-8002, 93-8013

* Rules of the Supreme Court of Montana are abbreviated "R.S.C.M." Montana Rules of Civil Procedure are abbreviated "M.R.Civ.P."

Montana Rules of Appellate Civil Procedure are abbreviated "M.R.App. Civ.P."

TABLE C

LIST OF STATUTES AND RULES SUPERSEDED, IN WHOLE OR IN PART, OR AMENDED, BY DESIGNATED RULES OF APPELLATE CIVIL PROCEDURE

Statutes (R.C.M. 1947 secs.)	M.R.App.Civ.P.
93-5504 to 93-5509, incl.	9, 10, 25
93-5607	7
93-5608	9, 10, 25
93-5702	29
93-5707	9, 10, 25
93-5708	41
93-8001	1, 41
93-8002	1, 41
93-8003	1
93-8004	5
93-8005	4, 6
93-8006	6
93-8011	7
93-8012	6, 7
93-8013	8, 41
93-8014	7
93-8015	6
93-8016	13
93-8017	1
93-8018	9, 10, 25
93-8019	4, 6, 9, 10, 11, 25
93-8020	12
93-8021	9, 10, 25
93-8022	2
93-8023	14
93-8024	15
93-8025	16
93-9905(3)	41

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II	26, 27
III (1st par.)	20, 26
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VI	11
VII	9, 10, 25
VIII	9, 10, 25
IX	9, 10, 25
X	23
XI	22
XII	29
XIII	39
XIV	35
XV	34
XVI	39
XVII	37
XVIII	9, 10, 25, 33
XIX	32

XXI 35
XXII 35
XXIII 40
XXIV 3

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62(a) 7
62(d) 7
72 41

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